

WASHINGTON—The risk retention group industry is rallying around legislation that would expand the groups' underwriting authority and provide a new way to settle pre-emption disputes with state insurance regulators, but even backers concede that the odds of passage are slim.

The measure, H.R. 2126, introduced in June by **Rep. John Campbell**, R-Calif., would allow RRGs to provide property coverage to their member-owners. Under current law, RRGs can write all lines of commercial casualty coverage except workers compensation.

In addition, in disputes between the groups and state regulators involving whether the Liability Risk Retention Act pre-empts a state action, RRGs and/or state regulators could ask the director of the Federal Insurance Office to resolve the dispute.

Either party could seek a review of the federal insurance office director's ruling by the U.S. Circuit Court of Appeals for the District of Columbia.

RRG backers welcomed the legislation, especially the dispute mechanism, which could settle disagreements quickly with far less cost than litigation.

"You need some kind of oversight or dispute resolution so you don't fight the same issues over and over again," said Gary Osborne, president of captive and RRG manager USA Risk Group Inc. in Montpelier, Vt.

"There is a ton of industry support for something like this. RRGs are wasting time and money—which could be better used for risk control and claims management—fighting regulators" who are taking incorrect positions, said Michael Bemis, president in Lisle, Ill., of The National Catholic Risk Retention Group Inc., a Vermont-domiciled RRG.

But broad congressional support for the proposal has yet to develop.

So far, **Rep. Campbell's** bill has attracted only one co-sponsor, Rep. Peter Welch, D-Vt., while a Senate companion bill to be proposed by Sen. Jon Tester, D-Mont., has yet to be introduced.

That lack of broad support contrasts sharply with the last time lawmakers considered amending the law. In 1986, the Senate Commerce Committee passed a bill, which later became the LRRRA, within two weeks of its introduction. Final congressional passage came seven months later amid dramatic rate increases in many casualty lines.

Backers said there is congressional support for the Campbell measure, but it hasn't gained traction due to other, more pressing issues.

"Candidly, Congress is focused on some extremely important issues and, due to that, issues of lesser importance won't get that much attention, no matter how meritorious," said Robert H. Myers Jr., general counsel for the National Risk Retention Assn. and a partner with the law firm Morris, Manning & Martin L.L.P. in Washington.

Battles with state regulators continue, though disputes are fewer in number compared with previous years, some said.

"There have been a lot of disputes, but over the years there has been more acceptance (by state regulators) of RRGs," said Nancy Gray, regional managing director-Americas with Aon Insurance Managers in Burlington, Vt.

The most recent dispute—like many before it—involves how much authority state regulators have over RRGs that are licensed in other states. Nevada regulators last year issued an order to bar Alliance of Nonprofits for Insurance, Risk Retention Group, a large Vermont-domiciled RRG, to stop writing first-dollar auto liability coverage for its Nevada policyholders.

Nevada regulators said such coverage must be written by authorized insurers. To be authorized, an insurer must be a member of state guaranty association. However, RRGs cannot be members of guaranty associations under LRRRA.

ANI, which challenged the order, said in a court filing that the LRRRA specifically pre-empts any state laws that discriminate against RRGs. But Nevada regulators say there is a special carve-out from the LRRRA pre-emption provisions for state-mandated coverage.

In July, a federal judge ruled in favor of ANI, saying that LRRRA pre-empted the Nevada requirement. His order requires Nevada to recognize that the term “authorized insurer” includes RRGs, such as ANI.

Nevada insurance regulators, though, are appealing the ruling.